Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of Reporting Requirements for U.S. Providers of International Telecommunications Services Amendment of Part 43 of the Commission's Rules	IB Docket No. 04-112

REPLY COMMENTS OF TYCO TELECOMMUNICATIONS (US) INC.

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SUMMARY

The Commission has proposed back-door common carrier regulation of non-common-carriers by extending circuit status reporting requirements to non-common carriers with little explanation or justification. Tyco Telecommunications (US) Inc. therefore joins the majority of other commenters in this proceeding in urging the Commission to abandon its proposal. The Commission's proposal is wholly inconsistent with: (1) longstanding Commission policy and practice recognizing that common carriers and non-common carriers differ fundamentally in terms of regulatory obligations and the burdens that follow from such obligations; (2) agency practice seeking to deregulate international services; and (3) statutory directives that require the Commission to eliminate unnecessary regulatory burdens. Moreover, the proposal would not produce the results that the Commission describes. To the contrary, it would significantly increase the compliance costs of largely unregulated carriers without improving the usefulness of the data collected, thereby violating the Paperwork Reduction Act.

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Tyco is one of the world's leading integrated suppliers of undersea communications systems and services and the only such U.S.-based supplier. Tyco designs, manufactures, installs, and provides maintenance services for undersea cable systems. Operating a modern fleet of cable ships stationed around the world, Tyco has installed approximately 350,000 kilometers of undersea communications systems. Tyco also operates the Tyco Global Network ("TGN"), one of the most extensive and technologically advanced communications systems ever constructed, and holds cable landing licenses from the Commission.[1]

I. THE COMMISSION'S PROPOSED REPORTING REQUIREMENT CONFLICTS WITH LONGSTANDING COMMISSION POLICY AND PRACTICE

The Commission's proposal to extend the circuit status reporting requirement to non-common carriers conflicts with the Commission's longstanding policy and practice of imposing common-carrier regulatory obligations only on common carriers. *First*, it would impose common carrier regulation on non-common carriers, essentially conflating the two categories and diverging from longstanding statutory, judicial, and Commission distinctions to the contrary. *Second*, it would upend the Commission's work over the past decade to reduce carriers' regulatory burdens, as the 1996 Act requires.

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[1] *See TyCom Atlantic (US) Inc.; Application for a License to Land and Operate a Private Fiber-Optic Cable System Between the United States Mainland and the United Kingdom*, Cable Landing License, 15 FCC Rcd. 14,881 (Int'l Bur. 2000); *TyCom Networks (US) Inc. and TyCom Networks (Guam) L.L.C.; Application for a License to Land and Operate a Private Fiber-Optic Cable System Between the United States Mainland, Hawaii, Guam, and Japan, The TyCom Pacific Cable System*, Cable Landing License, 15 FCC Rcd. 24,078 (Int'l Bur. 2000). Tyco has announced its intention to sell TGN, but not its supply or maintenance businesses. *See* Tyco International Ltd. Form 10-K, at 4 (filed Dec. 17, 2003), *available at* http://investors.tyco.com/EdgarDetail.cfm?CompanyID=TYC&CIK=833444&FID=1047469-03-41163&SID=03-00.

A. The Commission Has Failed to Explain the Proposed Departure from Its Longstanding Distinction Between Common Carriers and Non-Common Carriers

By proposing that non-common carriers file circuit status reports, the Commission has apparently disavowed its longstanding practice—based on Title II of the Communications Act, as amended ("Title II") and related judicial decisions—of subjecting only common carriers to common-carrier regulatory obligations. The very rule part the Commission seeks to amend and apply to non-common carriers—Part 43—is titled "Reports of Communication Common Carriers and Certain Affiliates."[2] And the Commission codified the original circuit-status reporting requirement—which it had imposed informally on international common carriers—as a matter of common-carrier regulation.[3] Now the Commission expressly acknowledged in the NPRM that its proposal would blur the distinctions between common carriers and non-common carriers.[4] Yet nowhere has the Commission explained as a legal or policy matter why it seeks to abandon its longstanding policy and practice. Tyco therefore joins MCI, Inc. ("MCI"), SES Americom, Inc. ("SES"), and PanAmSat Corporation ("PanAmSat"), in urging the Commission to abandon its proposal.[5]

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2 *See* 47 C.F.R. Part 43.

3 *Rules For the Filing of International Circuit Status Reports*, Notice of Proposed Rulemaking, 8 FCC Rcd. 4902 ¶ 3 (1993).

4 *Reporting Requirements for U.S. Providers of International Telecommunications Services; Amendment of Part 43 of the Commission's Rules*, Notice of Proposed Rulemaking, 19 FCC Rcd. 6460, 6483 ¶ 60 (2004) ("*NPRM*").

5 *See, e.g.,* Comments of MCI, Inc., at 8-9, IB Docket No. 04-112 (filed July 26, 2004) ("MCI Comments"); Joint Comments of SES Americom, Inc., and PanAmSat Corporation at 1, IB Docket No. 04-112 (filed July 26, 2004) ("SES-PanAmSat Comments"). In fact, the Commission's proposed back-door common carrier regulation may extend far beyond circuit status reports. Without any explanation whatsoever, the Commission has apparently proposed to require all carriers to file traffic and revenue reports by May 1 of each year—a requirement that presently applies only to common carriers. *See NPRM*, 19 FCC Rcd. at 6502, App. B ¶ 5(a). The Commission should promptly clarify that these reporting

The Commission adopted the original circuit status reporting requirements pursuant to Title II, which expressly governs regulation of common carriers.[6] By contrast, the Commission presently regulates non-common carrier submarine cable operators under the Cable Landing License Act of 1921 on delegated authority from the President.[7] And the Commission regulates non-common carrier satellite operators under Title III of the Communications Act.[8] Nowhere has the Commission demonstrated how either the Cable Landing License Act or Title III would empower the Commission to impose common-carrier reporting requirements on non-common carriers absent a reclassification of those carriers as common carriers pursuant to Title II.

Instead, the Commission has offered only a regulatory *non-sequitur*—that regulatory classification should have no bearing on regulatory obligations or regulatory burdens[9]—to explain its proposal. But this rationale does not square with the Commission's longstanding applications of Title II and related judicial decisions, particularly under the Commission's private submarine cable policy.

In articulating that policy as it licensed the first non-common carrier submarine cable, the Commission found "no need to require these applicants to operate as common carriers" pursuant

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requirements do not apply to non-common carriers. *See, e.g.,* SES-PanAmSat Comments at 9 (arguing that "[c]learly the Commission cannot adopt such a significant alteration in the scope of the rule without seeking comment on the advisability of the change.").

6 *See Rules For the Filing of International Circuit Status Reports*, Report & Order, 10 FCC Rcd. 8605, 8608 ¶ 20 (1995); 47 U.S.C. § 201 *et seq.* (titled "Common Carrier Regulation")

7 *See* 47 U.S.C. § 34; Exec. Order 10,530, § 5 (1954).

8 *See* 47 U.S.C. §§ 301 *et seq*.

9 *NPRM*, 19 FCC Rcd. at 6483 ¶ 60 (stating that "the current rule makes a distinction based on regulatory classification even though the facilities are generally fungible and are often provided from the same platform (submarine cable or satellite facility). In addition, the current rule puts the Commission in the position of effectively treating substantially similar platforms under different regulatory structures for purely regulatory reasons.").

to Title II.[10] Applying *NARUC I*, the Commission found that private submarine cable operators did not operate as common carriers, and that there was no public interest requirement—whether to safeguard competition, or for other reasons—to require them to operate as such.[11] Since that time, the Commission has permitted applicants to elect in their applications for common-carrier or non-common-carrier status, subject to Commission approval.[12] And the Commission's rules reserve to the Commission the right to impose common carrier regulation under the first prong of the *NARUC I* analysis—the proper remedy for competition-related concerns.[13]

The FCC has recognized the importance of preserving such choice in regulatory status, noting that it benefits the operators, consumers, and the Commission itself.[14] Indeed, the Commission has explained that "[m]aintaining both private and common carrier regulatory options for operating a submarine cable system provides licensees and the Commission, respectively, flexibility in seeking and determining how a cable system will be operated."[15] Because of the value that this flexibility provides to the Commission and to operators alike, the

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[10] *See Tel-Optik Ltd.*, Memorandum Opinion and Order, 100 FCC 2d 1033, 1041 ¶ 18 (1985) ("*Tel-Optik*").

[11] *Id.* at 1046-47 ¶¶ 19-20, citing *National Ass'n of Regulatory Utility Commissioners v. FCC*, 525 F.2d 630, 641 (D.C. Cir.) ("*NARUC I*"), *cert. denied* 425 U.S. 992 (1976).

[12] *See* 47 C.F.R. § 1.767(a)(6).

[13] *See* 47 C.F.R. 1.767(g)(10); *NARUC I*, 525 F.2d at 642 (stating that the court must inquire "whether there will be any legal compulsion . . . to serve [the public] indifferently").

[14] *See Tel-Optik*, 100 FCC 2d at 1041 ¶ 19 (drawing an analogy between its private cable policy and its policy of allowing the private sale of domestic satellite transponders, noting that the operation and sale of capacity on a non-common carrier cable "would (1) permit the providers of capacity to make tailored and flexible arrangements with customers that are not possible under the regimen of a tariffed service offering, (2) enable customers to make long-term plans for the use of facilities with assurance as to facility availability and price, (3) permit systems to be specifically designed to customer needs, and (4) result in positive market development for new and innovative service offerings").

[15] *Review of Commission Consideration of Applications under the Cable Landing License Act*, Report and Order, 16 FCC Rcd. 22,167, 22,202 ¶ 70 (2001) ("*Submarine Cable Streamlining Order*").

Commission has "decline[d] to adopt the suggestion of some . . . that we eliminate the distinction between cables operated on a common carrier and private carrier basis."[16]

Consequently, the Commission never regulated non-common carrier submarine cable operators under Title II or the Commission's Parts 43 and 63 rules for international common carriers. But by subjecting non-common carriers to circuit status and possibly other reporting requirements, the Commission would reverse course. Such regulation is entirely inconsistent with the very idea of a private submarine cable policy and with the International Bureau's finding, in applying *NARUC I*, that the public interest does not require operation of the facility on a common carrier basis.[17] Such conditions threaten to reduce the very flexibility that has served U.S. carriers, investors, and consumers so well since 1985. And they fail to satisfy basic administrative law requirements, namely, reasoned decisionmaking and explanations for departures from past agency practice.[18]

Consistent with these views, three other parties have urged the Commission to preserve the distinction between regulated and unregulated operators when applying the circuit status reporting requirement. MCI argues that the Commission should not extend circuit status reporting into currently unregulated areas, cautioning that the Commission's proposal may require reporting with respect to circuits used to transmit unregulated information services.[19] MCI's focus on information services is misguided, however, as the Commission has long based

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16 *Id.*, 16 FCC Rcd. at 22,203 ¶ 70.

17 *See NARUC I*, 525 F.2d at 641.

18 *See Atchison Topeka & Santa Fe Railway Co. v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973) (stating that an agency has a "duty to explain its departure from prior norms"); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971) (stating that "an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored").

19 *See* MCI Comments at 9.

submarine cable regulation on the manner in which the cable operators offer capacity and to whom, rather than on the nature of the traffic carried by their customers in using such capacity.[20] SES and PanAmSat also argue that the FCC should refrain from regulating currently unregulated entities, but they push this argument to a narrow and self-serving conclusion by contending that some currently unregulated operators (*i.e.*, satellite operators like themselves) should not be required to report, while others should.[21] Despite the misguided or self-serving bases of these positions, however, Tyco agrees with the more general gist of both the MCI and SES-PanAmSat positions: that the Commission should not begin subjecting largely unregulated services or facilities to burdensome circuit status reporting.

B. The Commission's Proposal Is Inconsistent with Other Deregulatory and Streamlining Efforts

The proposal to require non-common carriers to file circuit status reports undermines the Commission's efforts to reduce regulatory burdens as Congress directed. As the U.S. Supreme Court has recognized, Congress' overarching goal in enacting the 1996 Act was to "reduce regulation."[22] And Congress directed the Commission to review its rules on a biennial basis to repeal or modify rules and regulations that are "no longer necessary in the public interest as the result of meaningful economic competition."[23] Indeed, even before Congress passed the 1996

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[20] *See, e.g.*, *AT&T Submarine Systems, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd. 21,585, 21,587-88 (1998) (stating that "[w]e disagree . . . that the activities of [the licensee's] customers are relevant to a determination of whether [the licensee] is a telecommunications carrier or a common carrier"), *aff'd sub. nom Virgin Islands Telephone Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999).

[21] *See* SES-PanAmSat Comments at 5-7.

[22] *Reno v. ACLU*, 521 U.S. 844, 857 (1997).

[23] 47 U.S.C. § 161.

Act, the Commission stated that it may increase recordkeeping obligations only when there is a "clear need" for additional regulation.[24]

For much of the past decade, the Commission has adhered to these deregulatory directives in reducing regulatory burdens associated with the provision of international services, including even those for international common carriers.[25] Most recently in 2002, the Commission greatly streamlined its submarine cable landing licensing rules, noting that those rules would allow submarine cable operators "to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both industry and government, while preserving the Commission's ability to guard against anti-competitive behavior."[26] The Commission explained that the streamlined rules would decrease "the costs of deploying submarine cables . . . to the ultimate benefit of U.S. consumers."[27] By starting to impose common-carrier reporting requirements on non-common carriers, the Commission threatens to undermine its previous efforts to deregulate submarine cables.

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[24] *Deregulation of Radio*, Second Report and Order, 96 FCC 2d 930, 939 ¶ 22 n.12 (1984) (explaining that explained that it "would flout the will of Congress if we imposed such a recordkeeping burden . . . without clear evidence that it is needed.").

[25] *See 1998 Biennial Regulatory Review—Review of International Common Carrier Regulations,* Report & Order, 14 FCC Rcd. 4909-10 ¶ 1 (1999) ("*214 Further Streamlining Order*") (stating the Commission's intentions to "reliev[e] providers of international telecommunications services of regulatory burdens that are no longer necessary," to "allow new carriers to enter the market more easily," and to " allow carriers already providing service more flexibility to conduct their businesses. We also remove or clarify unnecessary or confusing rules and simplify existing procedures"); *Streamlining the International Section 214 Authorization Process and Tariff Requirements,* Report & Order, 11 FCC Rcd. 12,884, 12,885 ¶ 2 (1996) ("*214 Streamlining Order*") (seeking to "facilitate entrance into the international telecommunications market and expansion of international services" by, *inter alia*, reduction of paperwork obligations).

[26] *See Submarine Cable Streamlining Order*, 16 FCC Rcd. at 22,168 ¶ 1.

[27] *Id.*

There is no "clear need," or any need at all, to require non-common carriers to file circuit status reports. The circuit status report is a relic of a bygone regulatory era in which submarine cable operators could increase a system's capacity only after receiving authorization from the Commission.[28] Such regulation, designed to thwart monopolistic impulses, is unnecessary in the highly competitive market for international bearer circuits that exists today.[29] To the contrary, it would impose significant compliance costs on largely unregulated entities—costs ultimately borne by end-users. It would effectively reverse the Commission's successful effort to streamline submarine cable regulation. And as explained in greater detail in part II below, the proposal would not even produce the results the FCC describes in the NPRM.

II. THE COMMISSION'S PROPOSED REPORTING REQUIREMENT WOULD FAIL TO SERVE ANY PUBLIC-INTEREST OBJECTIVE

If implemented, the proposed reporting requirement would fail to serve any public-interest objective, or even the Commission's own stated objectives in this proceeding.[30] Instead, it would merely extend the significant regulatory burden borne by common carriers, with little comparative benefit.[31] Unsurprisingly, a number of commenters have made a strong case for eliminating circuit status reports even for common carriers.[32]

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[28] *International Competitive Carrier Policies*, Report & Order, 102 FCC 2d 812, 845 ¶ 81 (1985).

[29] *214 Streamlining Order*, 11 FCC Rcd. at 12,901 ¶ 38; *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market; Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23,891, 23,895-88 ¶¶ 7-13 (1997), *on recon.*, 15 FCC Rcd. 18,158 (2000).

[30] *NPRM*, 19 FCC Rcd. at 6461 ¶ 1 (stating the Commission's intent to "simplify the reporting requirements and to ensure the usefulness of the data collected").

[31] Comments of Verizon at 7, IB Docket No. 04-112 (filed July 26, 2004) ("Verizon Comments").

[32] *See, e.g.*, *id.* at 1-2 (stating that circuit status reporting requirements are "no longer necessary in the public interest given the enormous growth in competition on international routes, the

First, circuit status reports are unnecessary for combating anticompetitive actions in the market, nor do they provide the Commission with unique or timely information for purposes of assessing a proposed merger or acquisition.[33] The Commission has long justified its licensing of non-common carrier international facilities on the grounds that they posed no risk to competition.[34] And neither the Commission nor AT&T Corp.—the only party to express strong support for the Commission's proposal—explained why authorizations granted based on a conclusion that the authorized carriers posed no risk to competition suddenly require burdensome reporting requirements because those carriers may pose a risk to competition.[35] Thus, the Commission's proposed reporting requirement would contradict the Commission's longstanding policies and licensing decisions, as discussed in part I.A above. Moreover, the international services markets have only grown more competitive over the last 20 years. The proliferation of non-common carrier facilities have contributed greatly to exponential capacity growth and plunging capacity prices.[36] Market forces undercut anticompetitive or collusive activities regardless of the Commission's involvement.[37] In merger proceedings, the Commission should

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reduced need for the information contained in the reports, and the burden on carriers to produce them and the Commission staff to review them"); Comments of Sprint Corporation at 2, IB Docket No. 04-112 (filed July 26, 2004) ("Sprint Comments") (stating that circuit status reporting is no longer needed to assess the need for new facilities, monitor anticompetitive activities, or consider the propriety of proposed mergers).

33 *See NPRM*, 19 FCC Rcd. at 6461, 6483 ¶¶ 1, 60.

34 *See Tel-Optik*, 100 FCC 2d at 1041-42 ¶19.

35 *See* Comments of AT&T Corp. at 12, IB Docket No. 04-112 (filed July 26, 2004) ("AT&T Comments"). AT&T Corp.'s concern about data completeness is equally unavailing absent a public interest reason, such as risk to competition, for gathering that data. *See id.* at 12-13.

36 *See* Comments of Tyco Telecommunications (US) Inc., at 8, MD Docket No. 04-73 (filed Apr. 21, 2004) (stating that between 1998 and 2002, trans-Atlantic submarine cable capacity increased approximately 1800 percent while prices declined by 90 percent, and that trans-Pacific capacity increased by 2500 percent while prices declined by 90 percent).

37 *See* Verizon Comments at 5.

require parties to a transaction to submit the specific data sought by the Commission, rather than burden all carriers with substantial reporting requirements.[38] And the Commission should also make use of existing timely and comprehensive data from commercial sources—available for a fraction of the cost of the combined carrier efforts preparing circuit status reports and Commission efforts in processing such reports.

Second, circuit status reports do not and would not provide the Commission or the public with timely information about circuit capacity. The reporting requirement—in both its current and proposed forms—obligates covered carriers to file reports each spring "showing the status of its circuits used to provide international services as of December 31 of the preceding calendar year."[39] As a matter of practice, however, the Commission does not release the data until the following December,[40] meaning that the data is already a year old by the time it is available in usable form, which greatly "decreases the data's utility."[41] Obviously, extending the reporting requirement to non-common carriers would do nothing to improve the data's timeliness. If anything, the proposed rule would result in an even greater reporting delay, because the Commission would have to process more data and because it has proposed moving the reporting deadline back from March 31 to May 1 of each year.[42]

Third, the circuit status reports do not currently provide an accurate count of aggregate circuits, and they would not provide an accurate count even if non-common carriers were to file

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38 *See* Sprint Comments at 2.

39 47 C.F.R. § 43.82; *NPRM*, 19 FCC Rcd. at 6502, App. B ¶ 5(d).

40 *See* International Bureau, Federal Communications Commission, *2002 Section 43.82 Circuit Status Data* at 33-34, Table 7 (Dec. 2003) (releasing 2002 circuit status data at the end of 2003).

41 Verizon Comments at 7.

42 *Compare* 47 C.F.R. § 43.82 *with NPRM*, 19 FCC Rcd. at 6502, App. B ¶ 5(d).

as the Commission proposes. The Commission contended in the NPRM that the existing reports under-report active circuits because they do not include "information on circuits operated on a non-common carrier basis."[43] Requiring non-common carriers to file could result in over-reporting, however. As SES and PanAmSat explain, "multiple parties could be filing reports covering the same circuits."[44] Common carriers that use non-common carriers' capacity to provide service already report those circuits in their circuit status reports.[45] Including separate reports from non-common carriers would create confusion and lead to double-counting of circuits leased to common carriers, thereby failing to improve the accuracy of the collected data.

Fourth, the Commission cannot justify the extension of circuit status reporting to non-common carriers on regulatory-fee-related grounds given its commitment to reform the regulatory fee regime for international bearer circuit operators.[46] The Commission's likely move from circuit- to license-based fees will eliminate any need to reference circuit status reports for compliance or other purposes.

Fifth, and finally, the Commission should not impose reporting requirements—such as the proposed circuit status report for non-common carriers—for the purpose of regulating the

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43 *NPRM*, 19 FCC Rcd. at 6483 ¶ 60.

44 SES-PanAmSat Comments at 8.

45 *See NPRM*, 19 FCC Rcd. at 6483 ¶ 60 ("The Commission has stated in the past that common carriers may purchase circuits in non-common-carrier facilities for use in providing their IMTS and other common-carrier services and that, in such cases, the circuits become common-carrier facilities.").

46 *See Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, Report and Order ¶ 29, MD Docket No. 04-73 (rel. June 24, 2004) (stating that "a fee system based on licenses, rather than circuits, would be administratively simpler for both the Commission and carriers"). *See also id.* (noting that "[w]e are also concerned that basing the fees on the active circuits may provide disincentives to carriers to initiate new services and to use new facilities efficiently. A more complete record on these issues is needed. Consequently, we plan to raise these issues and seek comment in our *FY2005 NPRM* on possible changes to the circuit-based fees structure for international carriers.").

addition of new capacity or facilities.[47] For reasons of economic efficiency, determinations as to which carriers should enter particular markets, and at what time, are best left to the markets.

III. THE COMMISSION'S PROPOSED REPORTING REQUIREMENT WOULD VIOLATE THE PAPERWORK REDUCTION ACT

The Commission's proposal to extend the circuit status reporting requirement to non-common carriers violates the Paperwork Reduction Act of 1995 ("PRA").[48] The PRA, which was designed to eliminate costly recordkeeping and reporting obligations,[49] seeks to "minimize the paperwork burden . . . resulting from the collection of information by or for the Federal Government,"[50] while simultaneously "ensur[ing] the greatest possible public benefit from and maximiz[ing] the utility of information created."[51]

The Office of Management and Budget ("OMB"), which implements the PRA, has established a clear standard for determining whether a proposed recordkeeping or reporting rule violates the Act. According to OMB guidance, a proposed rule satisfies the PRA only if the sponsoring agency demonstrates that it possesses three characteristics. *First*, the proposed rule must be "the least burdensome way of obtaining information necessary for the proper

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47 *See NPRM*, 19 FCC Rcd. at 6483 ¶ 60 (stating that the proposal to extend the circuit status reporting requirement to non-common carriers "would be helpful in assessing the levels of unused capacity and the need for new cable facilities.").

48 44 U.S.C. §§ 3501–3520.

49 *See id.* § 3501(3).

50 *Id.* § 3501(1).

51 *Id.* § 3501(2).

performance of [the agency's] functions."[52] *Second*, the proposed rule must not duplicate other recordkeeping obligations.[53] Third, the proposed rule must have "practical utility."[54]

The Commission's proposal to extend the circuit status reporting requirement runs afoul of the PRA's first and third requirements. The Commission has not demonstrated, as the PRA requires, that its circuit status proposal is the least burdensome way of obtaining the information or that the proposal has practical utility. As noted above, the Commission can obtain the limited circuit data it needs much more cheaply by relying on commercially available sources or requesting data from the specific providers involved in a particular proceeding, such as a merger review. As explained in part II above, the circuit status reporting requirement provides limited useful information in its current form. By expanding it to non-common carriers, the Commission would increase the costs, rather than the utility, of the circuit status reports in violation of the PRA.[55]

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[52] Memo from John D. Graham, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, to Chief Information Officers, General Counsels and Solicitors, Attachment at 1 (Nov. 14, 2001) ("*OMB PRA Memo*").

[53] *Id.*

[54] *Id.*

[55] Additionally, the *NPRM* and the corresponding *Federal Register* notice neglect to inform the public how to submit comments to OMB, as the PRA requires. *See* Reporting Requirements for U.S. Providers of International Telecommunications Services, 69 Fed. Reg. 29,676 (FCC May 25, 2004); *OMB PRA Memo*, Attachment at 1 (requiring agencies to "publish a notice in the *Federal Register* of the agency's submission to OMB of a request for approval and tell the public how to comment to OMB regarding the request").

CONCLUSION

For the forgoing reasons, Tyco joins the majority of other commenters in this proceeding in urging the Commission to abandon its proposal to extend circuit status reporting requirements to non-common carriers.

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